

Joshua Bernstein

1 Q. Do you have any hard 2 evidence or hard basis for saying that 3 other than your belief? 4 A. Not at this point. 5 Q. Do you, the period -- I 6 think we went over this -- the period of 7 missing sent e-mails was roughly May 8 through August or September of 2008? 9 A. I don't have it offhand. 10 Q. Approximately. I won't hold 11 you. Give or take a month; is that 12 right? 13 A. I will give that, yeah. 14 Q. So during that period did 15 you download any of your files or all of 16 your files to this portable hard drive? 17 A. During that period I did 18 download files. 19 THE WITNESS: Can I use the 20 bathroom real quick. 21 (Whereupon, a short recess 22 was taken.) 23 MR. DOMB: What's the last 24 question please.	Page 226	1 A. I don't know. I don't keep 2 count. 3 Q. Do you have the more than 4 one external drive containing Bayrock 5 materials? 6 A. I don't believe so. 7 Q. So you have one? 8 A. Yes. 9 Q. Does that, what do you call 10 that, an external drive? Is that a good 11 term for you to use? 12 A. It works. 13 Q. Does that drive contain 14 items other than Bayrock-related items? 15 A. I believe so. 16 Q. Is there a way for you to 17 separate out the Bayrock from the 18 non-Bayrock? 19 A. Should be. 20 Q. How would you do it? 21 A. Manually. 22 Q. One by one? 23 A. Absolutely. 24 Q. How many different e-mails	Page 228
1 (Whereupon, the requested 2 question was read back by the 3 reporter.) 4 Q. And you said, I believe that 5 you keep these in a portable hard drive? 6 A. What are these? 7 Q. The electronic files from 8 Bayrock that you took with you? 9 A. I did. 10 Q. And you still have it? 11 A. I don't have that drive, 12 that specific drive, no. 13 Q. You transferred it to a 14 different drive? 15 A. Yes. 16 Q. So the contents are still 17 there? 18 A. Yes. 19 Q. Does the drive have things 20 on it other than Bayrock-related items? 21 A. Does the current drive or 22 the -- 23 Q. Well, how many do you now 24 have?	Page 227	1 or files are in it? 2 A. I don't know. 3 Q. When you produced documents 4 in this case you did not produce all the 5 Bayrock-related items in that portable 6 hard drive, did you? 7 A. It's all relevant documents. 8 Q. And you made the decision as 9 to what is relevant or not? 10 A. (No response.) 11 Q. Who made that decision? 12 MR. FEINBERG: You served a 13 documented request. He responded 14 to the document request. 15 MR. DOMB: I'm asking a 16 simple question. 17 Q. Who made the decision as to 18 what to produce from that drive? Was it 19 you? 20 A. Between my counsel and I. 21 Q. So did you, are there some 22 Bayrock-related materials that you did 23 not produce? 24 A. Yes.	Page 229

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<p>1 MR. DOMB: Do you have any 2 objection to producing all 3 Bayrock-related materials that you 4 have not yet produced from that 5 portable hard drive.</p> <p>6 MR. FEINBERG: I guess if 7 you make a request specifically 8 we'll take it under advisement 9 whether we have a problem with it 10 or not.</p> <p>11 MR. DOMB: From my review of 12 the document request I thought it 13 was very broad and it was already 14 requested.</p> <p>15 But, for the record, we do 16 request that you produce promptly 17 all Bayrock-related items from 18 that drive.</p> <p>19 And as you know there's been 20 a dispute. We also request the 21 ability for an independent 22 computer expert to review that and 23 make sure that that happens. So 24 we do make that request, and</p>	<p>Page 230</p> <p>1 produce some and not others, and 2 we are entitled to see all of 3 them. So we make that request.</p> <p>4 MR. FEINBERG: And we'll 5 verify to see whether the request 6 that you made in terms of the 7 document response has been 8 complied with.</p> <p>9 And there may be documents 10 other than those which were 11 responsive to your request, which 12 is what I assume you're asking 13 for.</p> <p>14 In other words, just so 15 we're clear, you have a document 16 request --</p> <p>17 MR. DOMB: I'm making two 18 requests. If we requested it and 19 it hasn't been produced, obviously 20 we want it.</p> <p>21 MR. FEINBERG: Obviously.</p> <p>22 MR. DOMB: And if you did 23 not read our request broadly 24 enough, we now request all</p>
<p>1 please mark that.</p> <p>2 MR. OBERLANDER: That's 3 bilateral, isn't it? I think we 4 made the same request. I'm just 5 saying that it can be coordinated.</p> <p>6 MR. FEINBERG: You made the 7 request, because you have missing 8 documents that we were going to 9 access to try to find out why or 10 in what manner they were deleted, 11 okay. We've never indicated that 12 we have files that have been 13 deleted or other materials that 14 require --</p> <p>15 You don't get access 16 automatically to someone's 17 computer just because you want to 18 see what they have. You made your 19 request and we'll take it under 20 advisement.</p> <p>21 MR. DOMB: The record says 22 what it says. There are 23 Bayrock-related materials that 24 your side made a decision not to</p>	<p>Page 231</p> <p>1 Bayrock-related items in that 2 portable hard drive, whether you 3 deem them to be within our 4 document request, or whether 5 anyone deems them to be --</p> <p>6 MR. FEINBERG: That's a new 7 request, and we'll take that under 8 advisement.</p> <p>9 BY MR. DOMB:</p> <p>10 Q. Have you now described 11 fairly all of the Bayrock-related items 12 that you took with you after you left 13 Bayrock, that is, paper and electronic 14 files?</p> <p>15 A. All of what I -- there was a 16 Blackberry that I sent back to Bayrock, 17 that I retained or sent back.</p> <p>18 Q. Okay. On the Blackberry, 19 you had a Blackberry that was issued to 20 you or provided to you by Bayrock?</p> <p>21 A. Correct.</p> <p>22 Q. And after you left Bayrock 23 you sent it back?</p> <p>24 A. Yes.</p>